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Uber Technologies, Inc.

15  
16 **UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

17 CAREN EHRET,

18 Plaintiff,

19 v.

20 UBER TECHNOLOGIES, Inc.,

21 Defendant.  
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Case No. 3:14-cv-00113-EMC

**DEFENDANT'S MOTION FOR RELIEF  
FROM NOVEMBER 26, 2014  
NONDISPOSITIVE PRETRIAL ORDER  
OF MAGISTRATE JUDGE**

Judge: Edward M. Chen

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**NOTICE OF MOTION**

Please take notice that defendant Uber Technologies, Inc. hereby moves for relief from the November 26, 2014 nondispositive pretrial order of Magistrate Judge Ryu pursuant to Rule 72 of the Federal Rules of Civil Procedure. Per the Court’s Local Rules, no hearing is set for this Motion.

The motion is based on this notice of motion, the memorandum set forth below, the pleadings and papers on file in this action, and any other written or oral argument presented to the Court.

**STATEMENT OF ISSUES TO BE DECIDED**  
**(Civil Local Rule 7-4)**

1. Whether it is contrary to law to require Uber to produce emails that will be of minimal benefit to Plaintiff and yet pose a significant burden to Uber.
2. Whether it is contrary to law to require Uber to produce emails that Plaintiff has expressly stated she does not need before filing her motion for class certification, and that will be irrelevant if certification is denied, before Plaintiff's motion for class certification is ruled upon.

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1 associated with requesting transportation from taxicabs, Plaintiff needs only to compare Uber's  
2 public representations regarding the gratuity charge at issue with Uber's actual practice. Uber has  
3 already produced documents containing the representations it made to the public regarding the  
4 gratuity.<sup>2</sup> Further, Uber is in the process of collecting, reviewing and producing all of the internal  
5 emails from the General Managers ("GMs") of each city at issue during the time period ordered by  
6 Magistrate Judge Ryu.

7 Each of Uber's city teams operates as an individual business. *See* Decl. of Ilya Abyzov, at  
8 ¶ 1. During the time in question, when each city team was small, the GM for each city was the  
9 decision-maker for, or at least heavily involved in, which request services to offer, how Uber  
10 would calculate the fees it charged to drivers, and Uber's marketing to riders. *Id.* In short, they  
11 were involved in all aspects of uberTAXI that are relevant to the Plaintiff's claims. *Id.* The  
12 documents Uber has already provided, and the emails in the possession of these GMs that Plaintiff  
13 will receive on December 19, will provide Plaintiff with a complete understanding of Uber's  
14 practices with regard to the gratuity charge.

15 By contrast, the addition of Mr. Kalanick and Mr. Graves as custodians will provide  
16 Plaintiff with little, if any, additional benefit. Given the nature of Uber's decentralized business  
17 model, it is highly unlikely that any email discussing how Uber calculated the gratuity charge for  
18 uberTAXI would not be in the emails of one of the current GM custodians. *See* Abyzov Decl. ¶  
19 2. To the extent Mr. Kalanick or Mr. Graves may have exchanged emails with the GMs  
20 regarding these issues, the emails would be included in the email productions of the GMs Uber has  
21 agreed to produce. *See Moore v. Publicis Groupe*, 287 F.R.D. 182, 186 (S.D.N.Y. 2012) *adopted*  
22 *sub nom. Moore v. Publicis Groupe SA*, No. 11 CIV. 1279 ALC AJP, 2012 WL 1446534  
23 (S.D.N.Y. Apr. 26, 2012) (noting that the court had found that defendant's CEO "should not be

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24 <sup>2</sup> Representations to riders about requesting taxi service were made: (1) via Uber's blog  
25 posts; (2) via emails to riders sent through a separate system, not through Uber's internal email  
26 system; and (3) through the Uber app itself. Abyzov Decl. ¶ 3. Uber has produced or will  
27 produce these documents. Decl. of Arthur Roberts, at ¶ 2. Uber has also already produced  
28 representations made to drivers regarding how the gratuity and fees were calculated. *Id.* at ¶ 3.  
These productions have included collections from non-custodial ESI stored on networked or  
shared storage systems that are not limited to the personal files of the five custodians that Uber has  
agreed to use as email ESI custodians. *Id.* at ¶ 4.

1 included as a first-phase custodian” in part because his relevant emails would be gathered by other  
2 custodians).

3 The production of these emails would nonetheless come at a significant cost to Uber,  
4 which is a factor the Court must consider in deciding whether the discovery is proper. *See D.R.*  
5 *Horton Los Angeles Holding Co. v. Am. Safety Indem. Co.*, No. 10CV443-WQH BGS, 2011 WL  
6 4403974, at \*5 (S.D. Cal. Sept. 21, 2011) (limiting discovery based on expense to plaintiff where  
7 plaintiff had already given defendant responsive documents and defendant did not explain why it  
8 needed anything further). The expenses associated with processing, loading, reviewing and  
9 producing the emails from Mr. Kalanick and Mr. Graves would cost Uber an estimated  
10 \$90,000.00. *See Roberts Decl.* ¶ 1. This expense is in addition to the costs Uber will incur as a  
11 result of the newly extended date range for discovery and the addition of Andrew Macdonald as an  
12 email custodian.

13 Considering the marginal value of this discovery to Plaintiff and its significant cost to  
14 Uber, the Court should order that Uber not be required to produce these additional emails. In  
15 light of the sworn testimony of Ilya Abyzov, indicating the extreme improbability of the existence  
16 of documents within Mr. Kalanick or Mr. Graves’ emails that are responsive and not duplicative  
17 of the emails already being produced, Magistrate Judge Ryu’s Order to add these additional  
18 custodians was clearly contrary to the law. Fed. R. Civ. P. 72(a).

19 In the alternative, the deadline for the production of Mr. Kalanick, Mr. Graves and Mr.  
20 MacDonald’s emails should be provisionally scheduled for June 26, 2015, after the Court has had  
21 the opportunity to rule on Plaintiff’s motion for class certification. *See Babbitt v. Albertson's,*  
22 *Inc.*, No. C-92-1883 SBA (PJH), 1992 WL 605652, at \*2 (N.D. Cal. Nov. 30, 1992) (finding that  
23 “[d]iscovery on the merits is usually deferred until it is certain that the case will be allowed to  
24 proceed as a class action.”). In three separate Case Management Statements, Plaintiff has stated  
25 to the Court that “[p]laintiff would like to file a motion for class certification as soon as possible  
26 and believes she can do so after Defendant’s initial production of documents (*i.e.*, before  
27 Defendant’s production of emails and ESI).” (Dkt. No. 68 at ¶ 20(c); Dkt. No. 62 at ¶ 20(c); Dkt.  
28 No. 59 at ¶ 20(c).) Plaintiff has therefore said repeatedly that these emails are not necessary for

1 her class certification motion. *Id.* Given that Uber has already provided Plaintiff with its initial  
2 production of documents, by her own account Plaintiff does not need the emails from these  
3 additional custodians—or any emails—to prepare and file her upcoming motion for class  
4 certification.

5 Further, the Court has already ordered that “[f]urther discovery” will be discussed at a  
6 hearing on Plaintiff’s motion for class certification that is scheduled for April 23, 2015. (*See* Dkt.  
7 No. 72.) While the Court did not specifically bifurcate discovery between class certification  
8 issues and merit issues, the Court did make clear that there will be an additional opportunity for  
9 Plaintiff to conduct discovery if her motion for class certification is granted. (*Id.* (ordering  
10 “[c]lass certification motion hearing set for 4/23/15 at 1:30 p.m. Further CMC is set for 4/23/15 at  
11 1:30 p.m. Further discovery, ADR and trial date to be discussed at that time”).) Even where no  
12 formal bifurcation has been ordered, the proportionality principles of Fed. R. Civ. P.  
13 26(b)(2)(C)(iii) require that discovery before class certification be conducted in such a manner as  
14 to not generate extensive costs that may very likely ultimately prove unnecessary. *See O’Connor*  
15 *v. Uber Technologies Inc*, No. C-13-03826 (EMC) DMR, 2014 WL 5794323, at \*2 (N.D. Cal.  
16 Nov. 6, 2014) (limiting plaintiff’s discovery requests prior to class certification even though  
17 discovery was not bifurcated because plaintiff’s requests were disproportionate prior to  
18 certification and the Court had already ordered that plaintiffs would have further opportunity for  
19 more detailed discovery).

20 If Plaintiff is unsuccessful in certifying a class, the burden and expense associated with this  
21 production will prove to be a waste. *See* Manual for Complex Litigation (Fourth) § 21.14 (2004)  
22 (noting that “[p]recertification d]iscovery relevant only to the merits delays the certification  
23 decision and may ultimately be unnecessary”). Given that the Plaintiff herself has admitted that  
24 this discovery is not relevant to class certification and that the Court has ordered that further  
25 discovery will be held after class certification, it would be contrary to the principles of Fed. R.  
26 Civ. P. 26(b)(2)(C)(iii) to order Uber to add Mr. Kalanick, Mr. Graves and Mr. MacDonald as  
27 email custodians at this time.

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1 **CONCLUSION**

2 For the foregoing reasons, Uber respectfully requests that this Court order that Uber not be  
3 required to produce the emails of Mr. Kalanick and Mr. Graves. In the alternative, Uber requests  
4 that the deadline for the production of the emails of Mr. Kalanick, Mr. Graves, and Mr.  
5 MacDonald be provisionally scheduled for June 26, 2015, and that this deadline may later be  
6 modified if the Court has not yet ruled on class certification at that time.

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8 DATED: December 10, 2014

QUINN EMANUEL URQUHART &  
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